

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

EDDIE HERNANDEZ,

Case No. 2:16-CV-2917 JCM (VCF)

ORDER

V.

WAL-MART STORES, INC. et al.,

Defendant(s).

Presently before the court is plaintiff Eddie Hernandez’s motion to continue trial. (ECF No. 33). Defendants Securitas Security Services USA, Inc. and Wal-Mart Stores, Inc. (collectively “defendants”) filed a response. (ECF No. 34). Plaintiff did not file a reply and the time to do so has passed.

Plaintiff requests that the court continue trial because plaintiff passed away and plaintiff's counsel is in the process of creating an estate. (ECF No. 33). Defendants argue that the court should not continue trial because plaintiff has been deceased for over six months. (ECF No. 34).

Plaintiff's motion to continue, which was filed on October 3, 2018, is the first document that plaintiff has served noting the death. Under Federal Rule of Civil Procedure 25(a)(1), after serving a document noting the death of a party, a litigant has ninety (90) days to file a motion of substitution. Fed. R. Civ. P. 25(a). A court must dismiss the action if the relevant litigant fails to comply with Rule 25(a). *Id.*

More than ninety (90) days have passed since plaintiff filed his motion to continue. Accordingly, the court will dismiss without prejudice plaintiff's action pursuant to Rule 25(a)(1).

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to continue (ECF No. 33) be, and the same hereby is, DENIED.

1 IT IS FURTHER ORDERED that defendants' motion for summary judgment (ECF No.
2 35) be, and the same hereby is, DENIED without prejudice.

3 IT IS FURTHER ORDERED that defendants' motion for an expedited status conference
4 (ECF No. 40) be, and the same hereby is, DENIED.

5 IT IS FURTHER ORDERED that the matter of *Hernandez v. Wal-Mart Stores, Inc. et*
6 *al.*, case number 2:16-cv-02917-JCM-VCF, be and the same hereby is, DISMISSED without
7 prejudice.

8 The clerk shall enter judgment accordingly and close the case.

9 DATED February 4, 2019.

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11 UNITED STATES DISTRICT JUDGE